

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ROOFERS' PENSION FUND, Individually
and On Behalf of All Others Similarly
Situated,

Plaintiffs,

v.

PAPA, *et al.*,

Defendants.

Civil Action No. 2:16-cv-02805-MCA-LDW

ECF Case

Document Electronically Filed

CARMINGNAC GESTION, S.A.,

Plaintiff,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:17-cv-10467-MCA-LDW

FIRST MANHATTAN CO.,

Plaintiff,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-02291-MCA-LDW

HAREL INSURANCE CO., LTD., *et al.*,

Plaintiff,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-02074-MCA-LDW

MANNING & NAPIER ADVISORS, LLC,

Plaintiff,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-00674-MCA-LDW

MASON CAPITAL, L.P. AND MASON
CAPITAL LTD.,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-01119-MCA-LDW

PENTWATER EQUITY OPPORTUNITIES
MASTER FUND LTD., *et al.*,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-01121-MCA-LDW

TIAA-CREF INVESTMENT
MANAGEMENT, LLC, *et al.*,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-08175-MCA-LDW

NATIONWIDE MUTUAL FUNDS, *et al.*,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-15382-MCA-LDW

WCM ALTERNATIVES: EVENT-
DRIVEN FUND, *et al.*,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-16204-MCA-LDW

HUDSON BAY MASTER FUND
LTD, *et al.*,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:18-cv-16206-MCA-LDW

SCHWAB CAPITAL TRUST, *et al.*,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:19-cv-03973-MCA-LDW

ABERDEEN CANADA FUNDS –
GLOBAL EQUITY FUND, *et al.*,

Plaintiffs,

v.

PERRIGO COMPANY PLC, *et al.*,

Defendants.

Civil Action No. 2:19-cv-06560-MCA-LDW

**DEFENDANTS' MEMORANDUM OF LAW IN RESPONSE TO MOTION
FOR ISSUANCE OF LETTER ROGATORY**

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Defendants Perrigo Company plc (“Perrigo”), Joseph Papa, and Judy Brown respectfully submit this memorandum of law and accompanying Declaration of James E. Anklam in response to the Motion for Issuance of Letter Rogatory seeking Belgian Court assistance to obtain documents and testimony from Marc Coucke by Lead Plaintiffs’¹ and Plaintiffs in the multiple Individual Actions. Dkt. 191.

INTRODUCTION

On June 7, 2019, Lead Plaintiffs in the Class Action joined by multiple Plaintiffs in multiple Individual actions moved this Court to issue a letter rogatory to obtain information and testimony from Marc Coucke (“Coucke”). As explained in Lead Plaintiffs’ supporting memorandum of law, Defendants do not oppose the request and indeed intend to propound their own questions to Mr. Coucke. (*See* Dkt. 191 at 9.) In the interests of efficiency, *see* Fed. R. Civ. P. 1, Perrigo respectfully requests that this Court issue Lead Plaintiffs’ letter rogatory with the inclusion of the questions and exhibits attached as Schedule A to the Declaration of James E. Anklam dated June 17, 2019.

ARGUMENT

A primary consideration for a federal court when evaluating a request to issue a letter rogatory to obtain information from a witness outside of the United States is whether the information sought would be properly discoverable under the Federal Rules of Civil Procedure, *i.e.*, whether the requesting party seeks non-privileged information that is relevant and that does not impose a burden disproportionate to the needs of the case. *See* Fed. R. Civ. P. 26; *Lantheus Med. Imaging, Inc. v. Zurich Am. Ins. Co.*, 841 F. Supp. 2d 769, 776–77 (S.D.N.Y. 2012); *see*

¹ Lead Plaintiffs consist of the following three groups: Migdal Insurance Company Ltd., Migdal Makefet Pension and Provident Funds Ltd. (collectively, “Migdal”), Clal Insurance Company Ltd., Clal Pension and Provident Ltd., and Atudot Pension Fund for Employees and Independent Workers Ltd. (collectively, “Canaf-Clal”), and Meitav DS Provident Funds and Pension Ltd (“Meitav”).

also Margulis v. Hertz Corp., Civil Action No. 14-1209 (JMV), 2016 WL 4009819, at *2 (D.N.J. July 25, 2016) (Falk, M.J.). Defendants agree that the issuance of a letter rogatory is appropriate provided all parties have an opportunity to submit questions to the witness. Defendants ask that this Court, in its discretion, permit the inclusion of additional requests by Defendants that are relevant to the claims and defenses in this matter and proportional to the needs of the actions. *See Margulis*, 2016 WL 4009819, at *2 (“Ultimately, the decision to issue letters rogatory is a discretionary one.”). Defendants seek information from Mr. Coucke on topics related to Plaintiffs’ proposed questions and in order to further elicit information from Mr. Coucke that is relevant to the issues raised in this action by Plaintiffs’ claims and the defenses.

Like the Plaintiffs, Defendants would prefer if the deposition can be conducted in accordance with the usual practices under Fed. R. Civ. P. 30 and request that the letter rogatory so state. However, if the Belgian Court system does not provide for questioning by counsel for the parties, Defendants believe that Fed. R. Civ. P. 31 (deposition by written question) can be used as a substitute procedure. In this regard, Defendants propose that this Court request that the Belgian Court (if permissible under Belgian rules) keep the questions confidential until they are propounded to the witness during the proceeding. *See* Fed. R. Civ. P. 31(a)(3) & (5) and (b) (providing that the parties exchange the proposed questions in advance) and Fed. R. Civ. P. 30(c)(3) (providing for delivery of the questions in a sealed envelope to the examining officer). This Court should also request that the deposition be taken by a method that results in a verbatim transcript of the questions asked and the responses given. Defendants also propose that the Court request that the examination occur in the presence of counsel for the parties (Belgian counsel and if possible U.S. counsel as well).

In an effort to consolidate Plaintiffs' and Defendants' proposed requests to Mr. Coucke, Defendants have created a revised proposed letter rogatory for the Court's review that contains the document requests (Plaintiffs' Schedule A) and requests for examination and questions (Plaintiffs' Schedule B) filed by Lead Plaintiffs on June 7, 2019 (Dkt. 200-03), along with Defendants requests for examination and questions (Defendants' Schedule C). The exhibits for Plaintiffs' questions can be found in their filing made on June 7, 2019. Defendants' exhibits are attached to the Declaration of James E. Anklam filed herewith.

CONCLUSION

For these reasons, the Court should issue the letter rogatory proposed by Plaintiffs, as modified by Defendants, including Defendants' additional questions, in accordance with the procedures described herein.

Dated: June 17, 2019

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